On Prepositional Duties

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Abstract: In the prepositional phrase "duty to" the connection between the normative concept "duty" and the interpersonal relationship suggested by the preposition "to" is elusive. Accounts of directionality offered by will theorists and interest theorists manifest disjunctive intuitions. Attempts to undercut, circumvent or transcend that disjunction have not succeeded, I argue. All we can be confident the phrase conveys is that something about the duty matters in some way specifiable by reference to a counterparty. Exactly what matters about it, how, and why, are questions for substantive normative debate; we should not expect to discover answers simply by analysing the idea of directionality.

What does it mean to say that one person has a duty *to* another person?[1] The

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[1] This deceptively simple question has been rather neglected in the literature not in the sense that few have sought to *answer* it, for both interest and will theories of rights, in particular, can be construed as doing so (as has been pointed out by M.H. Kramer, "Refining the Interest Theory of Rights," *American Journal of Jurisprudence* 55 (2010): 31-39). Neglected has been the problem of interpreting the question prior to, or independently of, developing one or other of those kinds of answer. Over the years, some authors have noticed that there is a problem here, but without fully exploring it or, therefore, recognizing that it is as intractable as I shall be arguing here that it is. They include: G.I. Mavrodes, J. Narveson, and J.W. Meiland, "Duties to Oneself," *Analysis* 24 (1964): 165-171; H.J. McCloskey, "Rights," *The Philosophical Quarterly* 15 (1965): 115-127, 122n11; J. Waldron, "Introduction," to his *Theories of Rights* (Oxford: Oxford University Press, 1984), 8-9; L. W. Sumner, *The Moral Foundation of Rights* (Oxford: Clarendon, 1987), 39-45; J. Thomson, *The Realm of Rights* (Cambridge, MA: Harvard University Press, 1990), chapter 2; C. Wellman "Relative Moral Duties," *American Philosophical Quarterly* 36.3 (1999): 209-223, 209; M. Thompson, "What is it to Wrong Someone? A Puzzle about Justice," in *Reason and Value*, eds.R. J. Wallace, P. Pettit, S. Scheffler and M. Smith (Oxford: Oxford University Press, 2004), 350n23; A. Harel, "Theories of Rights" in *The Blackwell Guide to the Philosophy of Law and Legal Theory*, eds M.P. Golding and W. Edmundson (Malden MA: Blackwell, 2005), 191-206; G.W. Rainbolt,

prepositional phrase *duty to* is widely used, and many who use it appear to assume it has an intuitively clear sense.[2] The assumption appears to be that the expression is conceptually on a par with other prepositional phrases that link a normative concept with an interpersonal relationship such as having a *debt to* another person or making a *promise to* another person. When examined more closely, however, the nature of the connection between the normative concept and the interpersonal relationship is not so clear in the case of a *duty to*.[3] Attempts to explicate it reveal conflicting intuitions, and the conflict comes into particular focus when a *duty to* is conceptualized as correlative to a *right against*. For whereas one kind of rights theory conceptualizes the material condition of correlativity in terms of the second party's will, choice, or control, an opposing kind does so by reference to the second party's benefit or interests. The problem is not simply that the competing theories offer different interpretations, but that their accounts of the correlativity condition are mutually *disjunctive*. The disjunction is evident whenever, for an agreed case of a person having a duty, the two theories would yield conflicting verdicts about whom, if anyone, the duty would be "to."

The Concept of Rights (Dordrecht: Springer, 2006): 85-116; B. Brouwer and J. Hage, "Basic Concepts of European Private Law," *European Review of Private Law* 1 (2007): 3-26; S. Meckled-Garcia, "Moral Methodology and the Third Theory of Rights," SPP Working Paper 28 (London: University College London, 2008); G. Sreenivasan, "Duties and Their Direction," *Ethics* 120 (2010): 465-494. The author who comes closest to appreciating the problem as characterized here is S. Van Duffel, "The Nature of Rights Debate Rests on a Mistake," *Pacific Philosophical Quarterly* 93 (2012): 104-123.

[2] Not only in practice, but also in philosophical discussions, one finds it assumed that a "duty to" differs in a clear and self-evident way from a simple duty: it is a "quite natural" sort of locution according to A. I. Melden, *Rights and Persons*, (Berkeley and Los Angeles: University of California Press, 1977), 10; it is regarded as obvious that there are "certain duties that we can quite clearly regard as being relative to persons, in the sense that we can speak of a duty to someone to do or forbear from doing certain acts" by M.G. Singer, "On Duties to Oneself," *Ethics* 69 (1959): 202-205, 202. Indeed, for the purpose of drawing a contrast with the idea of a duty to oneself Singer refers to the expression having a *literal* sense (ibid.); see also Meckled-Garcia, "Moral Methodology": "there are some duties that are literally *owed to* others…" (12).

[3] See e.g. Thomson, *Realm of Rights*, 63.

If the will theory and interest theory cannot always agree on cases, this gives a critical edge to the question of what the expression means by occasioning a doubt as to whether there is in fact any general idea at all that the two theories are offering competing particular interpretations *of*. Can any definite and unequivocal sense be explicated for the idea of a *duty to* prior to or independently of choosing between those competing theories? I shall argue that none so far has been and that we have no reason to suppose one can. I shall challenge the supposition that it is *possible* to exhibit a meaning of the idea without recourse to the specific conceptual apparatus of one or other of the familiar disjunctive accounts. In doing so, my argument presents a challenge to those philosophers who believe that they may be able to offer some solution – for instance, by somehow transcending or circumventing the established disjunctive alternatives. It also presents a wider challenge to anyone who believes the idea of a duty being owed to a person has any definite meaning that does not depend on contested assumptions. The further significance of the argument is to shift somewhat the boundary perceived between what is proper to the conceptual analysis of the notion of a duty and what is a matter of substantive ethical debate. For it is issues regarding the latter, I shall claim, that are ultimately at stake when people take it to matter ethically whom a duty is "to."

Because I start from the premise that there is something to explain about the function of the prepositional adjunct, the first section addresses a potential challenge to that premise arising from the view that the idea of a "duty to" is actually a *sui generis* idea from which that of a simple duty is derived as a partial abstraction. After showing how the immediate objection can be replied to, I go on to suggest, in Section 2, that it only arises as a result of an equivocation that is surprisingly prevalent in discussions of the concept of a duty. The distinction that is not always sufficiently heeded is between the problematic idea of a "duty to" a second party and a relatively unproblematic idea that a duty directed by an authority of a normative order could be conceived as a duty owed to that authoritative source. I argue, therefore, that when we talk about directedness we should distinguish between its whither and its whence. Whither-directedness is what is at stake in the idea of a prepositional duty, and this is captured by idea of a right being correlative to the duty. As I argue in Section 3, however, the mere idea of correlativity does not warrant any assumption that there is any kind of state of affairs in the normative world, instances of which are denoted by

"directionality" and of which different theories then provide competing accounts. Those theories do not take a single shared set of (pre-theoretical) facts and then offer different accounts of it; for each account picks out a different set of facts according to which kinds its theory can recognize as salient. In section 4 I show that the two opposing interpretations not only differ: they are disjunctive; there does not appear to be any neutral or independent basis upon which one might decide between them. Indeed, in canvassing the idea that underlying those interpretations there might be some shared intuition, section 5 shows that the disjunction "goes all the way down" to a fundamental philosophical disagreement, exemplified by the contrasting views of duty in Hume and Kant. Yet, because there is something to be said for both views, section 6 considers whether the problem might be surmounted by developing a hybrid account that combines aspects of the two competing theories. Here I argue, though, that because there is a disjunction between them, a hybrid would not be a genuine synthesis but at most a new competing account. Nor, I argue, would there be any way of showing this to be an improvement on the established accounts, since there is no uncommitted perspective attainable from which to choose between them. Finally, then, a question is whether a genuinely synthetic approach, which would embrace insights of both theories, rather than force a choice between them, would be possible.

A preliminary exploration of this possibility, in section 7, suggests that a prepositional duty is an inherently complex notion because it has to convey something about both the connection and separation between persons. How persons can at the same time be connected and separate appears to be the real question underlying the inquiry. And since it is a divergent question, with a variety of answers that each generate further questions, the idea of a duty-to, I therefore suggest, represents not so much a simple intuition as a pointer to a research programme.

So finally there is also a methodological issue. If, prior to analysis, people so widely tend to assume the idea of a duty to is an intuitively clear one; and if the idea nevertheless proves as resistant to analysis as I suggest it does; then to understand people's widespread intuitions as other than a simple mistake requires a different kind of approach. I suggest that a synthetic, or dialectical, approach seems most promising. I certainly claim that one yields more insights than analysis alone into the question at hand. If that claim holds good, then the conclusion could have wider implications for thinking about how to approach rights theory.

§1

The argument of this article is premised on the thought that there is something more puzzling about the idea of a duty *to* than about that of a duty *simpliciter*: that is, whatever (and however much) needs to be explicated about the idea of a simple duty, whose instances are expressed in the form "X has a duty to *Φ*" (where *Φ* stands for a verb denoting some performance or forbearance), something additional needs to be said about the prepositional adjunct "*to*" which appears in statements of the form "X has a duty *to Y* to *Φ*" (where Y is a second party). However, this premise is open to challenge on behalf of the view that if there is any puzzle, it is the converse, namely, how could any duty *not* be a duty to? On this alternative view, any duty properly understood would be a *duty to*. Since the challenge, if successful, could pre-empt the very question at issue, or at least alter the terms in which the question should be posed, I shall address it directly.

Some who have reflected on originary meanings of the idea of "duty" have suggested reasons to think that the idea of "duty to" is a *sui generis* one from which the idea of a simple duty is a derivative abstraction. Joel Feinberg suggests something like this when he writes:

> "Etymologically, the word 'duty' is associated with actions that are *due* someone else, the payments of debts *to* creditors, the keeping of agreements with promisees, the payment of club dues, or legal fees, or tariff levies to appropriate authorities or their representatives. In this original sense of 'duty,' all duties are correlated with the rights of those *to* whom the duty is owed."[4]

He continues by noting that in the meantime the word "duty" has come to be used for *any* action understood to be *required,* on whatever basis and whether or not correlated with a right of another:

> "Thus, in this widespread but derivative usage, 'duty' tends to be used for any action we feel we *must* (for whatever reason) do. It comes, in short, to be a term of

[4] Joel Feinberg, "The Nature and Value of Rights," *The Journal of Value Inquiry* 4 (1970): 243-257, 243-4.

moral modality merely…."[5]

Still, what Feinberg calls the derivative usage might be seen as capturing at least a core element of his more complex "original" idea, and a necessary one. Therefore we could analyse that idea into its more elementary parts and thus address the question I have proposed.

It is possible, though, to state a stronger claim than Feinberg explicitly makes, namely, that a duty is *necessarily* a duty to.[6] This claim would amount to a stipulative definition of what a duty is: for to say that a duty is necessarily a *duty to* would be to dismiss the conceptual possibility that any duty might have no counterparty;[7] so then any normative constraint of such a kind would have to be called something other than a duty. The view implied by this definition would pre-empt the challenge of accounting for the function of the preposition "to" by seeing it, in effect, as conceptually welded to the term "duty," even when it is not linguistically explicit. We may refer to this as the view that the very concept of a duty is intrinsically prepositional. Let us consider some reasons that might be offered in support of the view.

One suggestion in support might be that the very idea of a duty shares the relevant features of the debts and promises that feature in Feinberg's etymological account. When one has a debt it is always and necessarily a debt *to* a creditor, even if one can speak of debts without explicitly saying on each occasion who the corresponding creditor is. This can be regarded as a matter of conceptual necessity, since to say of a "debt" that it was categorically not owed to anybody would defy intelligibility. Similarly with promising: if there is not at least implicitly a promisee

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[5] Ibid., 244. For a related claim, see W.D.Lamont, "Duty and Interest: II," *Philosophy* 17 (1942): 3-25, 22.

[6] See e.g. D. Novak, "Religious Human Rights in the Judaic Tradition," *Emory International Law Review* 10 (1996): 69-83, 69: "the very concept of duty cannot stand on its own without the correlative concept of rights. After all, a duty is something one owes to someone else. That someone else, therefore, has a right to that duty."

[7] The term "counterparty" is used in deontic logic to indicate the party whom a duty is a duty "to." As we later have occasion to note, when modelling the relation of this party to the duty-bearer, deontic logicians face exactly the difficulty I am emphasising in this article.

to whom a promise is in some sense addressed (even if not in actual words or even if only to oneself) then we have no way of understanding why the word promise was used rather than one not imply a relation, like, say, resolution. But can we see the same kind of conceptual necessity for a duty to be a duty *to* another party? I would suggest not: whereas the attempt to conceive of a debt as not owed by someone *to* someone else leads to perplexity, we encounter no comparable perplexity in entertaining the idea of a duty as that which one ought to do, without necessary reference to any second party;[8] so the analogy is not persuasive.[9]

Perhaps rather than as an analogy, though, it might be suggested that a duty is something one does literally owe to another person.[10] Certainly, the locution of one person *owing* a duty to another is quite common currency, but we need to be aware that the locution can lend an air of tangibility to an illusory idea. It is one thing to recognize that some duties can have a directional content, as, for instance, in a duty of X *to-pay-$100-to-Y*. In this instance, what X owes Y is payment of $100, and when X pays Y §100, the duty is fully discharged; X does not owe Y $100 plus a duty to pay Y $100. A duty is not "literally owed" in that way. Some duties can have what might be called internal direction, in virtue of a second party being specified in the content of the duty; this does not mean that all duties are intrinsically directed, in the sense of necessarily being directed to a counterparty. Whatever "literal" meaning a statement such as "X *owes* a duty to Y to *Φ*" is thought to convey, it includes nothing not also conveyed by a statement such as "X *has* a duty to Y to *Φ*". So the occurrence of the verb "owe" in English statements about duties should not be taken to introduce some ulterior meaning to investigate.

One further suggestion to consider is that instead of double-counting, we might substitute entirely an "owing" phrase for a "duty" phrase: thus we may have, as

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[8] The idea of owing a duty to a second party, as I go on to emphasise in the next section, should not be confused with the distinct idea of owing a duty to, say, the issuing authority of the duty.

[9] One might even urge that, far from being inconceivable, the concept of a duty *simpliciter* is the one element in Hohfeld's schema of correlatives and opposites with a clear definitional reference outside the schema itself. (See, e.g., Van Duffel, "Nature of Rights.")

[10] See e.g. Meckled-Garcia, "Moral Methodology," 12.

a proposed definitional equivalent for "X *has* a duty to Y to *Φ,*" the phrase "X owes it to Y to *Φ*." But would the new phrase be a genuine equivalent for the one it replaces? The original phrase asserts the existence of both a duty of S and a normative relation between X and Y; but the substitute phrase, by eliminating the reference to a duty of X, leaves the possibility that X is beholden to Y in a manner such that *Φ* is urged of X regardless of whether *Φ* would for any other reason be required of X. So what I owe a person when "I owe it to her" is not necessarily what would be required of me as a duty (e.g. suppose I owe it to The Godfather); and when what I have is a duty, then this may be irrespective of whether or not I am also beholden in any way to the other (e.g. suppose I am defence lawyer for The Godfather, even though I despise him).

So it seems the suggestion that duties are necessarily duties to, in the sense of being intrinsically prepositional, is not persuasive enough to support a claim that my proposed question is pre-empted. I therefore maintain that there is no reasonable objection to so framing our inquiry that it starts out from an idea that can be referred to as duty *simpliciter,* with the question being how this would be modified when understood as being a duty *to* a person.

§2

So we can ask the question as initially proposed: how does the idea of a prepositional duty differ from that of a simple duty? This question does presuppose that we have a definite idea of a simple duty, and I acknowledge that the alleged simplicity of the idea might be deceptive: for if a duty is something more than a moral modality merely, then specifying what more it is could lead us into conceptual complications. What I suggest, however, is that we need only add one further specification to that of being a normative modality – i.e. a prescription or proscription – in order to form an idea of a duty that is sufficiently clear for the purposes of our inquiry. This further specification is that a duty is necessarily a prescription or proscription that is recognized as such from within the framing of a specific normative order: wherever a duty is intelligibly posited, a normative origin of the imperative it entails is necessarily presupposed.[11] The necessity of a duty having a normative source – an

[11] See e.g. N. MacCormick, "Institutional Normative Order: A Conception of Law," *Cornell Law Review* 82 (1997): 1051-1070.

issuing authority – lends sense to talk of a duty being owed *to* that authority. Such talk seems to me quite intelligible, but it should be distinguished from talk about a duty being owed to another person, I shall show.

The idea of a simple duty, then, can be regarded as a normatively contextualised "ought" – i.e. as a moral modality within a specific normative order. A simple duty is captured by a statement of the form "X has a duty to Φ" – and such a statement, as far as X is concerned, means that X must, or ought to, Φ. These are cognate expressions I take to convey the idea that X is under some prescription or prohibition with respect to action Φ.

So, with that as our reference point, we can highlight how the idea of a duty to a second party Y can appear puzzling. If we start with the idea of a simple duty – a normative requirement or constraint on one's action or conduct, whereby a particular action or type of conduct is enjoined or prescribed, prohibited or proscribed – then the nature of the challenge may be made vivid as follows. A simple duty binds a person, the duty's bearer, to an action (or forbearance) Φ: so if X has a duty to Φ, then this is as much as to say X must Φ or X ought to Φ. Yet we would not say "X must *to Y* Φ" or "X ought to *to Y* Φ." If such statements are clearly infelicitous, then the challenge is to explain what, by contrast, makes statements on the model "X has a duty *to Y* to Φ" intelligible. Evidently, any explanation would start by noting that whereas a statement of a simple duty, as likewise of a must or an ought, implicates only one person, namely, its bearer, a statement of a prepositional duty refers also to a second person. The question is how this prepositioning of a second person is to be understood.

One way the preposition has been understood to function is by conveying some idea of *direction*, *directionality* or *directedness*.[12] Yet the idea of a duty being

[12] Thus a number of authors refer to a duty to another person as a *directional duty* or *directed duty.* See e.g. Feinberg, "Nature and Value of Rights"; Harel "Theories of Rights"; D. Enoch, "A Right to Violate One's Duty," *Law and Philosophy* 21 (2002): 355-384; Sreenivasan, "Duties and Their Direction"; M. Gilbert, "Scanlon on Promissory Obligation: The Problem of Promisees' Rights," *The Journal of Philosophy* 101 (2004): 83-109; Thompson, "What is it to Wrong Someone?" (A variant, the term "direct duty," tends to appear in a specific debate about duties to animals (see §5 below).) The expressions "relative" or "relational" duty have been used instead by some philosophers: e.g. Wellman "Relative Moral Duties"; R. Cruft,

directed from one person to another is not self-evidently clear. To appreciate why this is so, it is helpful to notice two quite distinct takes on the directedness of duties, namely, the *whither* and the *whence*.

Any duty at all, even a simple duty, is directed in one clear sense: it is directed to its bearer. To have a duty is to be under a direction to act or forbear as prescribed or proscribed in a statement of the duty's content. Such constraints on action must have an authoritative normative source: this establishes both that there is in force the imperative referred to as the duty and also the reasons why there is, its *wherefore*. That source might be – depending on which normative frame is presupposed in positing the duty in question – God, law, social custom, club rules, moral law, or even just one's personal moral conscience. It is not a reference to the authoritative source giving normative direction to a duty, however, that is intended by those who use the idea of a directed duty. To capture the intended sense, whereby a duty is directed to a second person – a moral peer, rather than a moral authority – it is appropriate to distinguish between the source, or *whence*, of a duty's direction and its *whither*. Thus whereas all duties, including simple duties, are necessarily *whence*-directed, so to speak, duties with directionality in the intended sense are *whither*-directed too.

To be sure, it is possible to think of certain kinds of usage in which the distinction may appear not clearly to apply: for instance, the performance of a duty originating from a community's norms might be thought of as owed *to* that community, or a duty issuing from one's god might be thought of as owed *to* that god. However, the question that concerns us is what it means for a duty to be directed to another person who is *not* the authoritative source of the duty, but who is rather – and here a choice of words is not easily lighted upon – something like its recipient or onward-directee, or, in the formal language of deontic logic, "counterparty." The

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"Rights: Beyond Interest Theory and Will Theory?" *Law and Philosophy* 23 (2004): 347-397. However, these expressions appear to have more specialised established meanings in tort law: with "relative" applying to reciprocal duties between parties like spouses or road users, and "relational" applying paradigmatically to duties of care (see §6 below). In view of the scope for confusion that is highlighted in this article, I have opted to promote the theoretically unladen term "prepositional duty."

word chosen by Sreenivasan is *terminus*.[13] This conveys how a directed duty is thought not to terminate when the person under a whence-direction performs the action required as a simple duty; rather, it would only come to fulfilment with the satisfaction of some further condition which can only be specified by reference to something regarding a second person.

If this is a rather strained manner of expressing matters, then perhaps the lack of a sure linguistic footing serves to illustrate the uncertainties involved when we try – without, at any rate, using words like 'claimant' or 'beneficiary' that would immediately imply a commitment to one or other position in the controversy between will and interest theories – to isolate the sense of whither-directedness. Nevertheless, its reference, at least, can be captured in a more familiar idiom: a duty can be said to be directed to a second person when its bearer is directed to act so as to fulfil the second person's claim of *right* with respect to the duty. This is something that writers on the subject of what I am calling prepositional duties generally agree on – whether they use the term directed duty or some other.

§3

The idea that a person is owed a duty, then, in the intended sense, is captured by saying the person has a claim-right against the duty's bearer. Merely to note this, however, is to furnish no new information of the kind we are seeking about what it *means* for Y to have a duty towards X. For the very idea of a claim-right is itself defined as what a correlative duty implies. New information of the relevant kind would only be introduced by providing an independent account of what it means to have a claim of right. By this I mean an account, such as offered by will and interest theorists, of the conditions fulfilled when a correlation occurs and of its *wherefore* as a normative relation between duty bearer and right bearer. However, some philosophers suppose that we can make progress on the question in advance of settling on any such account. This supposition entails the idea that to the mere notion of correlativity there corresponds some definite kind of relation between persons, and such a kind, moreover, as can be characterized without invoking any of the

[13] Sreenivasan, "Duties and Their Direction."

considerations that are controversial between will theory and interest theory. Gopal Sreenivasan, for instance, suggests that a duty directed to the bearer of a correlative right differs in kind from a duty which is not so directed, and that the difference can be conceptualised prior to assessing the merits of competing rights theories.[14] Yet this view, I shall claim, is mistaken on both counts.[15] There is no reason to assume that a directed duty differs in kind from a duty that is not directed; nor is it even entirely clear, on closer inspection, what it could *mean* for a directed duty to "differ in kind" from a simple duty. In this section I shall show that it is perfectly intelligible to deny (as Sreenivasan wants to) that all duties are directed while also denying (against what he argues) that there is more than one "kind" of duty.

Now although Sreenivasan holds there are those two kinds of duty, he acknowledges that the *locus classicus* for conceptualizing the correlation of rights and duties – Wesley N. Hohfeld's work on "Fundamental Legal Conceptions" – does not register any such distinction. In the passage where Hohfeld introduces the thought that "duty" and "right" are correlative terms, he allows that a duty may be defined simply as "that which one ought or ought not to do," and immediately offers this gloss:

> "*In other words*, if X has a right against Y that he shall stay off the former's land, the correlative (and equivalent) is that Y is under a duty toward X to stay off the place."[16]

By treating the two idioms as equivalent, Hohfeld evidently attaches no conceptual significance to a difference between a simple duty and a directed duty.

Some interpreters have taken this to mean that Hohfeld thought all duties are directed duties: thus if Hohfeld did not explicate the shift in idioms in the cited

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[14] Sreenivasan, "Duties and Their Direction."

[15] Certainly, Sreenivasan's particular argument (ibid.) does not accomplish its stated aim, because – as we shall later discuss – the account he offers is precisely a hybrid combination of interest and will theories rather than a prior conceptualisation that is in any sense independent of them. Of more general significance, though, is the point – to be demonstrated here – that the aim itself is misconceived.

[16] W. N. Hohfeld, *Fundamental Legal Conceptions, as Applied in Judicial Reasoning*, ed. W. W. Cook (New Haven, CT: Yale University Press, 1919), 38 *[emphasis added]*.

passage it was because, for him, the unadorned term "duty" itself necessarily refers to a directed duty. Certainly, given that Hohfeld's interest is confined in the cited publication to providing an analysis of bilateral legal relations, and his whole conceptual framework is developed in terms of correlations and oppositions, one would expect all the duties that figure in that schema to be correlative duties, and thus directed duties on the definition assumed here. This does not imply that Hohfeld thought, and certainly does not require anybody else to think, that *all* duties (in some other or wider sense) are directed.

Sreenivasan, however, believes that such a thought has to be rebutted if we are to understand how a directed duty differs from a simple duty. So let us consider his reason why. There would be nothing remarkable about Hohfeld's treatment of simple duties and directed duties as equivalent, Sreenivasan says, if *every* duty were owed to someone or other; but if that is not the case, and some duties are non-directed, then "the question arises of what distinguishes the two kinds of duties."[17] However, I shall suggest that Hohfeld's paraphrase need not be regarded as remarkable even against the background assumption that not every duty is owed to someone or other, and this will lead us to consider in what sense simple duties and prepositional duties might be "two kinds of duties."

On an interpretation of Hohfeld that seems perfectly consistent with what he has written it could be held that any simple duty could be described as a directed duty on condition that there is someone who has a claim of right to its performance. The existence of such a claim would not alter the nature of the duty itself in any way requiring conceptual analysis.[18] (And that would account for why Hohfeld saw no need to supply any.) Thus suppose we take the statement of a simple duty "Y is under a duty to stay off the place" and insert it in a different context – say, the place is a tract of land that is not the private property of any individual X but has been set aside by the region's authority as a protected habitat of some endangered species of flora or fauna. Whatever difference there is between this duty and the duty towards X in Hohfeld's illustration depends on the nature and basis of the claims that might be raised against Y. These can be regarded as *extrinsic* to the characterization of the

[17] Sreenivasan, "Duties and Their Direction," 467.

[18] See, e.g., Braugher and Hage, "Basic Concepts," 21.

simple duty specifying what Y must do (viz., stay off the place). So that is what I think it is reasonable to hold. This view runs counter to the claim that all duties are directed in any necessary or intrinsic sense while allowing that *any* duty might, contingently, be *extrinsically* directed.[19] On this view, which sees directedness as extrinsic rather than intrinsic to a duty, there is nothing in the idea of correlativity that implies any determinate kind of relation between (persons who are) right- and duty-bearer. When a duty correlates with a right this has to do with the normative setting and how it is conceptualised, not the nature of the duty.

For completeness, we might also consider the further question: even if direction is logically extrinsic, what of the possibility that no simple duty can in fact be adequately understood except as directed, even if extrinsically? To advance the proposition "all duties are directed" on an inductive basis is to claim, in effect, that even if one can form the *idea* of a duty as undirected, one will nevertheless find in practice no actual duty that is undirected. Thus, a duty such as Y's duty "to stay off the land," for instance, when set in any actual context, will invariably turn out to have a correlative right. Suppose the land in question is the nature reserve, then it might be that the authority issuing the order has a claim against Y, or that the community thereby represented or served does, or that, given appropriate rules of standing, interested parties (e.g. conservationists) may have a procedural claim against Y, or even that the endangered species themselves have a substantive claim that could be pressed by proxy. Certainly, if we relax the requirement (identified in §1) that a directed duty has to be owed to a second person, narrowly construed, and allow wider criteria for counting as a second party, then it seems plausible to think that with enough ingenuity one could find a candidate correlative right for any duty at all.[20] So even by attempting to improve the illustration one is unlikely to succeed in refuting the inductive claim. However, the crucial observation is that if the idea of a directed duty admits of such latitude – as to include direction to originating authorities of a duty, third parties or even insentient beings – then it will admit of controversial and

[19] For the idea that correlative duties may be regarded as "intrinsically directed" see Gilbert, "Scanlon on Promissory Obligation," 87.

[20] See, e.g., M. Kramer, "Rights without Trimmings," in M. Kramer, N. Simmonds, and H. Steiner, *A Debate over Rights* (Oxford: Clarendon, 1998), 25n11.

conflicting interpretations regarding who (or even what) can have a correlative right and why. So while this approach does get us thinking about what it *means* for a duty to be directed, in doing so it precisely draws us into debate about substantive issues at stake between will and interest theorists.

I therefore maintain that we have no reason to suppose it possible to settle the question of what it means for a duty to be directed in advance of entering debate between the will theory and the interest theory.

§4

Both interest theories and will theories supply answers to the question of what it means for a duty to be directed. Their answers are not simply different, however, but disjunctive: they do not construe the question itself in the same way. Recognizing this, I shall argue, engenders serious doubts about the possibility of formulating any general idea of a directed duty such as would be acceptable to more than one section of those who believe it is intelligible to speak of a duty owed to a person.

The problem that motivates the turn to rights theory is that, if we look at a duty simply in terms of what a duty-bearer must do, it makes no material difference whether the duty is simple or directed. Suppose I have a duty to pay you $100: we know from this unadorned statement what the duty consists in and how it must be discharged; there remains no ambiguity that could only be resolved by expanding the statement to read "I have a duty *to you* to pay you $100." The added phrase has some point, though, if what we are interested to determine is not the action required as a duty but rather what it means to be the bearer of a right correlative to it. For instance, I may have a duty to pay you $100 because I contracted with you to pay you that sum, or alternatively I may have that duty because you are the third party beneficiary of an agreement I made with someone else. The added phrase indicates that the latter alternative is ruled out. This is practically significant because it means, for instance, that it is not some other person who can release me from the duty; it means that you (and not someone else) have a right to some remedy if I fail to pay you.

These meanings of the phrase are standardly emphasised by proponents of the will theory of rights. On their understanding, to be owed a duty is to stand in a relation of normative power or control *vis-à-vis* the duty's bearer. A particularly

telling way of putting this is in the words of H.L.A. Hart: "the individual who has the right is a *small-scale sovereign* to whom the duty is owed."[21] These words are telling because owing a duty to a "small scale sovereign" has a relevant resemblance to owing a duty to a large scale sovereign – i.e. to the directing author of the duty. Thus, on this account, the conceptualisation of whither-directedness trades on a key feature of whence-directedness: a duty is owed to a second person as if that person had normative authority over the duty bearer. If the *general* idea of owing someone a duty is understood to imply a clear contrast between the whither and whence of the duty's direction, as I suggested in §2, then this blurring of the distinction evidently renders the theory too controversial to be regarded as an exemplar of a more general idea. Certainly, by building the element of a normative power into that of a right, the will theory takes a step that its critics regard as unwarranted. So while this may be an internally coherent account of what it means for a person to owe another a duty, it is not a general account in the sense of capturing what non-adherents to the theory also understand by the idea.

On the presuppositions of the interest theory, by contrast, a duty is owed to a person not on account of their normative resemblance to its authorising director, but rather because they stand in what might be described as a relation of recipience to the action due to be performed – as is standardly captured by the idea of being its intended beneficiary or the party whose interests it serves. Take as an example a duty of care. If I have a duty of care towards you then it is you that I fail if I fail to take due care in your regard; this is so even if the source of my duty is, for instance, a contractual condition of my employment so that my duty might be, on a will theory interpretation, owed to my employer with you being merely a third party beneficiary of it. This account avoids the problem of conflating ideas of whither- and whence-directedness. Its own problem, however, as emphasised by opponents, is that it leaves unclear in what sense it is the *duty* and not simply the care – or, more generally, the benefit – that is owed to you. Instead of being attributed moral authority over me, you are in effect cast as a moral patient to my moral agency. This is why the interest theory can find duties directed to beings that could not, on the will theory, be bearers

[21] H.L.A. Hart, *Essays on Bentham* (Oxford: Clarendon, 1982), 183 [*emphasis added*].

of rights. Thus this account, too, is controversial and does not capture what is *generally* understood by the idea of a person owing another a duty.

These remarks are not intended as knock-down criticisms of either theory. My point is that their respective proponents do not just answer the question differently but in fact *construe* it differently. To mark the contrast in stark terms: for the will theory, a duty is directed to a right-bearer who, with respect to the duty, has a power akin to that of sovereign lawmaker, which, to coin a usage, we may call that of a *principal*;[22] for the interest theory, a duty is directed to a right-bearer whose position is describable as that of a moral *patient*. If the will theory has a cogent conception of how a duty is owed to a person, this is achieved by eliding the distinction between whither- and whence-directedness, and thus implying a different question than one which focuses on whither-directedness *in contrast to* whence-directedness. If the interest theory has a definite conception of whither-directedness, this is achieved by leaving unclear how it is the duty rather than simply the deed that is owed.

Since the two theories construe differently the very question of what it means for a duty to be directed, this casts doubt on the supposition that the idea of a directed duty captures a basic intuition that is common to the disjunctive interpretations of it.

§5

Could such doubt yet be assuaged? Might we not discern, underlying those disjunctive construals of it, a common idea, a general intuition whose sense can be teased out without recourse to the apparatus of either will theory or interest theory? An intuition of this kind was articulated by W.D.Ross: "to say we have a duty to so-and-so is the same thing as to say that we have a duty, grounded on facts relating to them, to behave in a certain way towards them."[23] This idea allows considerable latitude regarding what that "something" might be – whether it has to do with what

[22] The principal-agent relation is a familiar concept in economic and social science, and I think it conveys a helpfully vivid contrast with the agent-patient relation familiar in moral philosophy: the normative force exerted on the agent is, so to speak, "pushed" in the one case and "pulled" in the other.

[23] W.D.Ross, *The Right and the Good* (Oxford: Oxford University Press, 1930), 49.

they will, what their interests are, or something else again about them that might excite in us some kind of moral response. Ross would allow such latitude as a point of methodological principle, taking the view that we have a plurality of duties – and a plurality of grounds for them – such that duties are directed in different ways varying according to whether the counterparty stands, for instance, "in the relation of promisee to promiser, of creditor to debtor, of wife to husband, of child to parent, of friend to friend, of fellow countryman to fellow countryman, and the like… ."[24] However, Ross's view has been criticised for failing to heed a basic distinction between a duty that is properly regarded as a duty *to* and a duty that is merely a duty *with regard to*.[25] The distinction is clearly drawn by the will theorist Hart:

> "Perhaps some clarity on this matter is to be gained by considering the force of the preposition 'to' in the expression 'having a duty to Y' or 'being under an obligation to Y' (where 'Y' is the name of a person); for it is significantly different from the meaning of 'to' in 'doing something to Y' or 'doing harm to Y,' where it indicates the person affected by some action. In the first pair of expressions, 'to' obviously does not have this force, but indicates the person to whom the person morally bound is bound."[26]

What, though, does it mean for a person to be bound to another when the medium of that bond is referred to as a duty to? Hart says "This is an intelligible development of the figure of a bond (*vinculum juris: obligare*); the precise figure is not that of two persons bound by a chain, but of *one* person bound, the other end of the chain lying in the hands of another to use if he chooses."[27] But this description could be that of a master and his slave: so how can we make sense of the *moral* bindingness of a

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[24] Ibid., 19. In similar vein, it has more recently been argued that we avail of no monist account of the direction of duties by Van Duffel, "Nature of Rights."

[25] See e.g. M.J. Zimmerman, *The Concept of Moral Obligation* (Cambridge: Cambridge University Press, 1996), 7.

[26] H.L.A. Hart, "Are There Any Natural Rights?," *The Philosophical Review* 64 (1955): 175-191, 181.

[27] Ibid.

relationship that cannot be reduced to the simple subjection of one person's will to that of another?[28]

A seminal answer to this question, as well as the source of the distinction between a "duty to" and a "duty regarding," is to be found in Immanuel Kant's *Metaphysics of Morals*. According to Kant, a duty bearer is bound to another person in that through the duty he is constrained to pursue the end that is sought as that other person's will.[29] But to have a duty to a person is not a matter of being merely subject to that person's will; rather, it is the position one is in when one recognizes how one is, as an autonomous moral being, under an obligation to take as one's own that person's rationally willed end – which is represented in the stated content of the duty – and pursue it accordingly. On the basis of this idea of a duty *to,* Kant claims to diagnose the fallacy committed – an "amphiboly in moral concepts of reflection" – when one supposes one can have a duty *to* any being other than one with the same capacity of moral obligation as oneself. This is the fallacy of "mistaking his duty *with regard to* other beings for a duty *to* those beings."[30] With regard to animals, for instance, Kant holds that a human being has duties to avoid cruel treatment, but these differ in kind from our duties towards persons. Now, some have taken issue with Kant here and sought to resist his idea that a duty regarding an animal is not a duty "directed to" the animal. However, it is not entirely clear why they should be exercised by this idea. For, to put it bluntly, if a man has a duty not to kick his dog, why should the dog or anyone else care whether it is a duty *to the dog* not to kick the dog? It is not clear even how one could explain what the difference would be, without recourse to the finer points of the Kantian philosophy. The distinction

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[28] It is arguable that Hart fails to appreciate the force of this question. The sense in which a *moral* obligation, to be such, must be *internalised* by its bearer is captured by Kant's idea that "I can recognize that I am under an obligation to others only insofar as I at the same time put myself under obligation… ." (I. Kant, *The Metaphysics of Morals*, in M. J. Gregor, ed and trans., *Practical Philosophy (Cambridge Edition of the Works of Immanuel Kant)* (Cambridge: Cambridge University Press, 1999), 543.) Kant explicates this in terms of one's duty to oneself, an idea that Hart dismisses as absurd ("Natural Rights," 181).

[29] Kant, *Metaphysics of Morals*, 563.

[30] Ibid.

between a duty to and a duty regarding has whatever force it does on the basis of premises that are denied by an alternative philosophy of the kind exemplified by David Hume, and underpinning the tradition of interest theories, according to which cruelty is just wrong and should not be engaged in. Certainly, the distinction between "a duty to" and "a duty regarding" is not so clearly drawn or drawable on the interest theory account, since the reason why a duty would be a duty *to* a counterparty, on that account, is always and necessarily based on some fact *regarding* the counterparty.

If the will theory has an account of what a *duty to* means in contrast to a *duty with regard to*, the interest theory has an account of why we should care about duties with regard to that tends to undermine any significance of that contrast. It is worth considering, indeed, that cases where a duty with regard to a person matters most may arguably be precisely those where it matters least that one can speak of it as a duty "to" that person. For instance, if we want to prevent unconscionable abuses of human beings belonging to one group by those of another, it is not clear what is gained in point of stringency, focus or any other kind of significance by insisting that the perpetrator has a duty *to* the victim not to harm them. In such instances, the duty not to torture a particular person is not due to any peculiar fact about the person, her will or interests; it is due to very general facts about what is good for humans and what duties humankind have with regard to all others of their kind.

When we try to identify an underlying intuition, then, what we find is an idea that is either too indeterminate to fulfil any of the roles normally attributed to prepositional duties, or, attempting to give any more precision to the idea reveals a bifurcation – two contrasting ideas of what a duty is. There does not appear to be any neutral alternative. When we try to get directly at some basic intuition we find that the bifurcation goes "all the way down" – to a philosophical disagreement exemplified by the contrasting positions of Kant and Hume about the very meaning of the idea of a duty.

§6

Given that each kind of account captures something that people seem intuitively to understand by the idea of a *duty to*, what about the possibility of explicating the idea

as a combination of those intuitions? The evident obstacle to doing so is that each account also implies propositions that its opponents reject. This suggests that in order to succeed, the new account would have to be a proper synthesis in the sense of offering an enlarged perspective from which the contradictions between the established theories can be revealed as merely apparent or as aspects of a bigger picture that taken as a whole is not self-contradictory. What I have in mind differs from the idea of a hybrid combination of selected aspects of the competing theories. In this section, I show why we should not expect the latter sort of approach to succeed in supplying a more satisfying answer to our question than either of the existing competitors.

First, though, it should be acknowledged that a selective combination of will theory and interest theory ideas can for some purposes appear to work. We have evidence of this in practice from the field of tort law, particularly in relation to duties of care. There, the idea of a "relational duty" can be used to capture, for instance, the situation in which a person is held to be under a duty of care towards another person, and in two senses that, although analytically distinguishable, both apply in the case. Thus when a person is said to have a relational duty towards another person this can mean both that the content of the duty has regard to that other person (i.e. the care in question has to be shown to them, with harm to them avoided) *and* that this other person is the one to whom the duty is owed in the sense that is revealed by its proving to be the case that they, and not another, have a claim and standing to press it in the event of a breach of the duty. Yet while this idea of a relational duty, which is essentially a hybrid idea, may have some cogency within the bounds of the context it is used in, it cannot serve as a model for the more general idea of a directed duty. For although in the particular kind of context where it serves the two meanings do not come apart, we know that in other contexts they do.

Now Gopal Sreenivasan has recently attempted to bring together a combination of insights from will theory and interest theory so as to provide a more general account of directed duties which is a hybrid combination of them. Whereas the two accounts match contingently in the kind of case just mentioned, his aim is to show how they can be brought to match "by design." Sreenivasan's approach starts out from a recognition of the disjunction between the two established accounts of what it means for one person to have a duty to another, presented by reference to their

respective commitments to either control or interests as decisive criteria. He goes on to propose a hybrid combination: "to be the terminus of someone's duty to *Φ* is to be the person whose interests govern the assignment of control over her duty to *Φ*."[31] Yet, despite its ingenuity, his selective combination does not – as he implies – point a way beyond the debate;[32] rather, by taking selected elements from each theory and setting aside others, it introduces a further contentious position into the debate. This is evident from the joint response of two leading proponents of the opposing theories in summing up their careful analysis of his position: "Far from being a hybrid position that blends the strengths of those two theories, Sreenivasan's account of rights is replete with implications which those two theories are united in rejecting." [33]

Nevertheless, on behalf of Sreenivasan it might be argued that his position improves on the others; or, against my more general point, it might be suggested that some other hybrid could do so. However, such suggestions give rise to a critical methodological question: on what basis could we say that one account was an improvement on another? This question would be no embarrassment for a genuinely synthetic approach – in the event one were proved to be possible – for such a theory, that could accept the deliverances of *both* established theories *and* reveal the contradictions between them to be merely apparent, could thereby quite reasonably be adjudged an improvement on each. However, to suppose that a hybrid approach could be shown to be an improvement on *both* of the established theories simultaneously is mistaken on methodological grounds.

In order to assess the competing merits of accounts, at least two conditions must be fulfilled: the accounts must be responding to the same question, so that like is being compared with like; and we must have some framework of evaluation, so that we know what we should be willing to count as merit and can assess which theory possesses it. My argument throughout has been that the first condition simply is not

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[31] Sreenivasan, "Duties and their Direction," 493.

[32] He implies that the question of directed duties can be – and is by him – settled prior to engaging the dispute between will theory and interest theory: see, for instance, ibid., 482; 487n59.

[33] Matthew Kramer and Hillel Steiner, "Theories of Rights: Is There a Third Way?" *Oxford Journal of Legal Studies* 27 (2007), 281–310: 309.

fulfilled as regards the two established theories because they have disjunctive understandings of the question. Sreenivasan's position on this issue appears to shift somewhat: at the outset he seems to recognize the disjunctive nature of their disagreement, and even refers to it when explaining the elements of his hybrid; but he loses sight of it when he compares what they say as if they were answering exactly the same question: for he claims that the interest theory provides a *more general* answer than the will theory.[34] I would maintain that the answers cannot be compared against a single yardstick in this way: while the interest theory may accommodate a *wider range* of cases, it is not more general in a sense such that the will theory would then be more specific in capturing only a subset of what the interest theory captures. For the will theory also captures cases which the interest theory does not.

However, suppose I am wrong in some way about that, do we have any reason to think the second condition can be fulfilled? To have a framework of evaluation from within which to assess independently the competing merits even of just the original two theories would in effect be to have arrived at a position of transcendence with respect to their limitations. Sreenivasan writes as if he had attained one when he offers his judgement that the interest theory "creates too many directed duties" and "over-generalizes from the will theory" so that the challenge is to find a way of generalizing the will theory that "manages not to overdo it."[35] This construal of the challenge presupposes not only that the two theories answer the same question, but also that we have an independent basis from which to account for all genuine cases of rights and duties prior to entering the debate. For only then would we be able to tell if one account "overdoes it" or another fails to recognize some cases that should be

[34] Sreenivasan, "Duties and their Direction," 484.

[35] Ibid., 487. *Ad hoc* intuitions are especially evident when he elaborates objections to the restrictions on the range of rights recognized by the will theory, pointing out cases "to which we clearly should be able to generalize it," such as those where a right-bearer lacks capacity or power to waive her right. In such cases, he avers, "it seems intuitive to regard the relevant duties as still being owed to the person disabled from waiving them." (484) So the will theory is wrong to imply there is no fact to explain about duties being owed to incompetents. But what is the basis for deciding this is wrong? He speaks of an "intuitively correct result," yet the intuition is that of an interest theorist and not shared by opponents, who, in turn, offer an entirely different characterisation of the relation referred to by a prepositional duty.

recognized. Yet if it really were possible to have an independent understanding of all the cases to be accounted for in advance of choosing between the competing accounts, then that understanding would have pre-empted any continuance of the debate. It would, I claim, thereby presuppose and represent the achievement of a synthesis. But a hybrid is not a synthesis, and, as we have noted, participants in the debate have found Sreenivasan's position to be arbitrarily selective in accepting elements of each theory that he intuitively considers correct while disregarding the corollaries of those elements that have kept the opponents from agreeing on a unified view.

We cannot identify cases of directed duties in advance of having a theory of what counts as directedness. To suppose otherwise is to allow an inappropriately essentialising assumption that directed duties in some sense "exist," independently of the normative constructions in terms of which we conceptualise them, and that we simply need to find a good way of describing them. Such a supposition is illusory. It is a mistake to suppose somehow that there are normative phenomena in the world denoted by the term "duty" which have a property denoted by the term "directionality" that one can examine and characterize more or less accurately. The meanings of such ideas are *constituted* by the theories we have about them – thus we have the idea of "directionality-as-controlled" which the will theory uses in its conceptual analysis of the normative world, and the other quite distinct idea of "directionality-as-benefiting" which the interest theory uses.[36]

[36] This point is also borne out by those who have attempted to model "directed duties" in terms of deontic logic: attempting to model the relationship of a duty bearer *to* a counterparty they have been faced with making a choice between constructing it as one in which the counterparty benefits from the duty or has a controlling claim over it. As has been observed by Y-H. Tan and W. Thoen, "Modeling Directed Obligations and Permissions in Trade Contracts," *Proceedings of the 31th Hawaii International Conference on System Sciences* (IEEE Computer Society Press, 1998), 5: "The reason for this vagueness in the definition of Herrestad and Krogh is related to the fact that they want to model directness in arbitrary types of obligations. Hence, they cannot make the choice for either the beneficiary or claimant interpretation, and hence their model must be compatible with both interpretations, which makes their definition necessarily rather vague. We can avoid this problem, because with contractual obligations one only has to model the claimant interpretation."

If those distinct ideas are to be combined in a unified account of "directionality," a hybrid approach is in principle unsuited to achieving this. For this will not be achieved through a mere compromise at the level of description; what would be required is an integration at the level of theory, whereby contradictions between competing accounts are not simply ignored but are set in a perspective from which they can be recognized as parts of a bigger picture. Any less comprehensive framework of evaluation would be vulnerable to appearing partisan to proponents of a theory whose deliverances were not accredited in it as they think appropriate.[37]

At the level of description, there is just no distinct idea available of directionality *tout court* that is not either vague or contested. The reality seems to be that people living under normative orders may be subject to various imperatives to do various things for various reasons; some of the imperatives binding a person with respect to her actions can interact with other imperatives or norms regarding her relations with others. When these interact in certain ways the resulting situation is referred to as one involving directed duties by will theorists, and when they interact in other ways the situation involves directed duties as these are identified by interest theorists. Sometimes the verdicts of the two theories concur, but their reasons never fully do.

§7

If a hybrid approach seeks, problematically, to finesse those differences, an approach aiming at a synthesis would seek to develop a wider framing that can accommodate the differences within an integrated picture. So the remaining question is whether we could attain a synthetic perspective from which it is possible to grasp a unitary idea of what it means to speak of a duty *to* another person.

[37] Indeed, that Sreenivasan's hybrid account of claim-rights is vulnerable to will theory rejoinders is shown, for instance, by Horacio Spector, "Comment on professor Gopal Sreenivasan's A Hybrid Theory of Claim-Rights," *Problemas contemporáneos de la filosofía del derecho*, ed. Enrique Cáceres (México D.F.: Universidad Nacional Autónoma de México, 2005).

What both of the established theories are held to be offering competing accounts of is sometimes referred to as *directionality*. This term captures the idea of a dynamic asymmetry in the relation between an agent and counterparty. Michael Thompson has characterized the general idea of directionality as involving a "bipolar" relation between "a pair of distinct agents … joined and opposed in a formally distinctive type of practical nexus." For him, they are "like the opposing poles of an electrical apparatus: … I represent an arc of normative current as passing between the agent-poles… ."[38] The metaphor of polarities suggests that an agent may get the moral equivalent of a jolt from the arc occasioned by the moral proximity of another person. Staying with the metaphor, we might add that right-bearers appear to exhibit two distinct kinds of polarity, depending on whether they relate to the duty-bearing party as principal or as patient. Still, in either case, if it is the difference in charge between the poles that generates the arc, then the current may flow either way – "whither" or "whence." Thus this representation seems to be neutral in relation to will and interest theory controversies, but it leaves us with the question of what difference the stimulus makes when an agent is already bound to perform a duty.

For the established theories, the idea of directionality refers to the normative location of a correlative right-bearer.[39] The idea thus implies something conceptually distinct from correlativity, understood simply as a logical relation between deontic operators: directionality refers to a relationship between the substantive *bearers* of rights and duties. The inquiry would thus concern the wider context in which duties are borne by persons, and not just the nature of duties. Indeed, we might note that to speak of a duty (or a right) having a "nature" at all is liable to mislead: duties and rights are not substantive or self-subsistent entities with existence outside the particular contexts within which they are invoked. The terms "right" and "duty" serve as shorthand expressions "by which it is possible … to visualize the content of a

[38] Thompson, "What is it to Wrong Someone?", 335.

[39] "The Will Theorists maintain that the direction of any duty is determined by the location of the authorization to waive or seek enforcement of the duty, whereas the Interest Theorists contend that the direction of any duty is determined by the location of the generally beneficial effects that are intrinsic to the fulfillment of the duty." (Kramer and Steiner, "Theories of Rights," 298)

set of legal rules"[40] and their use "assumes a special and very complicated setting, namely the existence of a legal system with all that this implies … ."[41] Whether the complicated setting assumed is that of a legal system, or of any other kind of normative order, what is to be emphasized is the practice-dependent nature of those normative constructs we refer to as rights and duties.[42] A synthetic approach to the question of directionality, therefore, could appropriately widen the inquiry to examine relevant contextual features of a determinate normative order.

If duties and correlative rights arise in the context of practices, then, a route to understanding directionality could be through understanding the relationships between persons engaged in practices. It is argued by Leif Wenar that a key to understanding directed normative relations is to consider a person, qua right bearer, as the bearer of a *role* in relation to others: "the fact that one role-bearer's duty has a direction is explained by the attractive force of another role-bearer's desirous state."[43] This idea of a "desirous state" is to be understood in terms not of an individual's psychology but of what a role-bearer (typically) requires of others in order to discharge the obligations attendant on the role. The right-bearer's claim thus arises from the recognized requirements of a normatively validated role within the normative order. Wenar suggests we can generalize the account so as to show that it applies also to rights and duties attaching to kinds of position and identity beyond those of formally designated roles. Since myriad roles and positions are possible in a society, including some that could be characterized as patients and some as principals, taking this approach would not force a decision between will and interest theory accounts of who the right-bearers are. In focusing on roles of personae rather than relations of biographically distinguishable individuals, the approach would not be vulnerable to being misled by claims based on mere beholdenness. Wenar's proposal

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[40] A. Ross, *On Law and Justice* (Berkeley and Los Angeles: University of California Press, 1959), 174.

[41] H.L.A. Hart, "Definition and Theory in Jurisprudence," (1953) in *Essays in Jurisprudence and Philosophy* (Oxford: Oxford University Press, 1983), 27.

[42] See e.g. R.A. Primus, *The American Language of Rights* (Cambridge: Cambridge University Press, 1999).

[43] Leif Wenar, "The Nature of the Claim," *[tbc: details of article in this issue]*.

thus looks to offer a possible contribution to the development of a synthetic account of directionality.[44]

However, if a right-bearer is to be represented as exercising a force of attraction, we need to remember that attraction is not a unilateral matter, so where Wenar focuses on the nature of a right-bearer's claim, we would need also to consider how the corresponding duty-bearer's will might be engaged by it.

Now one way of developing an account of this is to start from the consideration that a duty will seldom, if ever, be so completely determinate in content that exactly what action is required does not stand in need of some interpretation.[45] Accordingly, if with a simple duty of A to *Φ,* whatever action *Φ* stands for, some interpretation is involved, then, we might suppose, when the duty of A answers to a claim of B, then A's duty should be understood to include the requirement to interpret the performance of *Φ* in a manner that makes good B's claim that A should *Φ*.[46] On these assumptions, an undirected duty would be fulfilled when the designated action

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[44] Wenar himself suggests that his organizing idea captures "the center of gravity of the claim-right, around which 'will' and 'interest' circle." He claims his account "is extensionally superior to the will and interest theories" because it has the merit of picking out the right-bearers in cases that one or both of them would struggle with – "cases where the theories cannot capture rights that everyone would instantly recognize as such." *[citation tbc]* Yet on this score, I have to pronounce myself skeptical, finding questionable whether Wenar has reliably intuited what people generally think, whether such an accomplishment is possible, and how we could anyway ever be sure that it had been. In other words, there is the methodological problem that I already highlighted in relation to Sreenivasan.

[45] This might be thought less evidently to apply to duties of forbearance, since a requirement to avoid doing something could in principle be fairly clear cut, but I take it that, especially when persons have any wider interaction with each other, a duty of forbearance will carve out a protected area while leaving other areas of contact open; determining exactly which actions are allowed in which contexts, therefore, is liable to involve some interpretation.

[46] For the general idea of focusing on the duty-bearer's responsibility of authoritative interpretation I have drawn inspiration from the innovative approach to directionality taken by Henry S. Richardson, "Directing Rights: A Liability Theory," (unpublished paper). The particular ideas I go on to extrapolate in the text, however, are a somewhat tangential construction of my own and only loosely based on their original source of inspiration.

is performed in any manner that could be judged a reasonable interpretation by the general standards of the practices governed by the normative order; a directed duty would be fulfilled, though, only when the action performed passed the more specific test of conforming to what would be a reasonable interpretation as judged from B's specific point of view.

However, because "B's point of view" is what will theorists and interest theorists compete to capture, the question resurfaces as to whether there is some way of capturing it that is both neutral with respect to their competing approaches and appropriately determinate. If the requirement of neutrality can be satisfied by attending to what the right-bearer qua person-in-role "wants," in Wenar's role-ascriptive sense, this only tells us something generic about how the role fits within the practices of a normative order; it would be indeterminate with regard to any specific consideration of the real individual who in a given case assumes a particular role. It is not clear that generic recognition between persons qua role bearers suffices to take us beyond what Thompson calls a monadic understanding of the relation to a bipolar one. A bipolar relation would involve a more specific recognition of the other such that failure to perform would be not just wrong, in terms of general norms, but a particular *wrong done to* the other.[47]

Following Thompson's thoughts on the subject, then, we should expect there to be something about B as a unique individual, and not merely as a representative occupant of a role, that has some bearing when a relationship exhibits directionality. Thompson refers to this (bipolar) kind of relationship in terms of "being-toward-another and other-to-each-other."[48] In such a relationship, an agent would not apprehend the other simply as either a patient or principal, but, rather, would adopt what Thompson refers to as a dikaiological attitude to them. This attitude involves a

[47] Thompson illustrates the difference thus: "'I did wrong in that I lied to you' contains representations of a pair of agents, indeed, but the combination is not properly bipolar: the representation of *you* falls inside the scope of the action description that is fitted into this monadic normative form; it does not go to characterize the form of normativity itself. You are the occasion, not the victim, of my fall." (Thompson, "What is it to Wrong Someone?", 340)

[48] See e.g. ibid., 358.

particular "posture of the mind" and appears to be a way of seeing matters that is accessible more by imagination than conceptualization. But I think we may identify in the attitude both a cognitive and a volitional aspect. We might isolate the volitional aspect by picturing our agent as suffering from temporary amnesia about what duty requires and yet experiencing a present feeling – a jolt of recognition – that *something* is required of her by this other person. Her awareness of the duty's content is then an accompanying cognition: *this* is what I am bound to do. The duty bearer is thus engaged by the task of interpreting "this" in the light of the other's specific correlative claim of right.

We have the suggestion, then, that the task of agent A is to enter the point of view of counterparty B, and, in effect, make B's ends – whether those are understood as the will of a principal, the needs of a patient, or in some other way – A's own.

The problem, I am going to suggest, is that while duty-bearer A cannot willfully assert her priorities over those of B when deciding how to interpret the duty, we may expect that the more conscientious A is in her reasoning, the less decisively might B's own priorities figure in her deliberations.[49] This can be explained as follows. First, note that the idea of making another's ends one's own has the following dual aspect: on the one hand, it means a commitment to act for the other's sake, embracing what they require as an aim of one's own action; on the other hand, it also means to make decisions oneself and thereby to bring about a transformative appropriation of the other's ends into one's own conception of them. The first aspect, the commitment, is volitional, and, in practice, its weakness or absence can be a real obstacle to duty-bearers doing what right-bearers require of them; but let us assume that A wants to do the right thing by B. The second, cognitive, aspect presents a different kind of problem. A contingent difficulty would be that even a person willing to adopt the other's point of view might be capable of only limited success, and, in an extreme case, acting on an interpretation based on faulty second-guessing, their compliance with duty could make matters worse than their non-compliance

[49] What it might mean to speak of "B's priorities" in this context has been more closely analysed by Marcus Hedahl, "The Significance of a Duty's Direction: claiming priority rather than prioritizing claims" (unpublished paper); see also Marcus Hedahl, *Owing it to Us* (Ph.D. dissertation, Georgetown University, 2012).

would have. But let us suppose we are dealing with a duty-bearer who has sufficient intelligence and intuition to surmount that problem, we then have what might prove to be a more serious difficulty, because it goes to matters of principle. Insofar as A conscientiously follows what duty requires, the impact on B's position of one interpretation rather than another of *Φ* involves seeing B as part of the wider practice with its underlying concerns (since otherwise A would succumb to the influence of mere beholdenness): therefore *neither* B's interests *nor* B's will would necessarily furnish a peremptory constraint on A's choice of specific action in fulfillment of the duty. So if accounting for directionality in this way avoids leading to an irreducible choice between will theory and interest theory criteria, it is because the deliverances of both those theories would be subordinated to the aim of determining what A finds right to do, all things considered.[50] Is there any way of constraining A's all-things-considered reasoning, while keeping it conscientious, and making it fit B's claim, unless B too is imputed with all-things-considered willingness to accept? I cannot think of one.

So, in order to explicate the idea of a "duty to" in a neutral but meaningful way by reference to the duty-bearer's authoritative interpretation of the duty, we have not only had to impute a considerable degree of intelligence, virtue and conscientiousness to the duty-bearer; we find we would also have to attribute no less to the right-bearer too. Oriented to a concern to explicate what a person who wants to be moral ought to do, the understanding is formulated in the key of a morality that is quite distinct from that in which, to quote Hart, "there is no incongruity, but a special congruity in the use of force or the threat of force to secure that what is just or fair or someone's right to have done shall in fact be done… ."[51] Certainly, if the right-bearer is expected to accept what A decides is the responsible way of discharging the duty, this understanding of directionality carries it some distance from the theoretical dispute about the criteria that should be used in deciding whether this or that person does or does not have this directed duty or that correlative claim.

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[50] As is emphasised, for instance, by Sreenivasan in 'Duties and Their Direction," the idea of a directed duty should be clearly distinguished from that of what, all things considered, one ought to do.

[51] Hart, "Are There Any Natural Rights?," 178.

To say this is to draw attention to the pragmatic point of having a discourse of rights at all. To strip out the adversarial element of rights and duties is arguably to set aside an important aspect of the understanding shared by the established theories, namely, that part of the point about having a right is to get a counterpart to do something (or forbear) when their tendency otherwise might be to be recalcitrant.

If the approach sketched above has potentially succeeded in providing an account of directionality, it will have done so, it seems, only by abstracting from the very sorts of circumstance that give purpose to the quest for a unitary account in the first place.

Might this simply be the result of the particular approach tried out here and not imply a more generalizable conclusion? I think it is worth noting why the result could have deeper roots in the nature of the problem. A normative order, to function as such, does rely on a degree of compliance; and a normative order that recognizes persons to have claims of rights as well as duties also requires a generalized spirit of cooperation to be at work in its institutions and practices. In presupposing a collaborative rather than adversarial context, then, the foregoing account of directionality opens up a complementary perspective on the circumstances in which the established debate arises. Whereas participants in the latter focus on what makes rights *necessary*, our approach to the meaning of directionality has brought us also to consider what makes rights *possible*. Any theory aiming to predicate general features of rights, I suggest, needs to take account of both these aspects. The tension between cooperation and contestation is *inherent* in rights as a normative form: we need cooperation to have rights; and we need rights because of contestation.

So the quest for a synthetic perspective on the meaning of a duty-to leads us to wider questions about how rights theory can account for both the possibility and necessity of right-duty relations in the social coordination of human conduct.

Regarding what it means to speak of a "duty to," the preposition is having to do service in conflicting tasks: it has to convey something about both the connection and the separation between persons, in different ways and in varying proportions according to cases. If the preposition conveys a single notion, the synthetic approach shows that to be an inherently complex notion. The notion resists analysis into a single basic intuition of a simple kind, and we should expect attempts to attribute it

one will always – if the account above is roughly correct – be at best partial and so fail in their aim. A synthetic approach allows us to accept that since there is a wide variety of ways in which people can at the same time be both connected and separated, the expression may admit of such rich interpretations as one finds in human relationships. The idea of a duty-to, then, is not so much a basic intuition as a window onto a research programme.

§8

In conclusion, my claim is that analysis reveals no single idea corresponding to that of a duty to, but at least two, quite disjunctive, ideas. Thus, the idea of a duty being a *duty to* another person has an analytically determinate sense only on condition of accepting one of the following constraints.

(a) One uses the term simply to mark the correlative of a claim-right. This is a readily intelligible usage but it conveys nothing further about what it means for one person to be duty-bound to another without supplementation by an account of what it means for the other to have a claim of right.

(b) One grants the assumptions of the will theory, whereby to owe a person a duty is to be bound to them as if they were the authoritative normative source of the duty. Accepting this constraint, one accepts that the term does not apply to cases – among which are cases allowed on the interest theory – where the duty-bearer does not or cannot recognize the corresponding right-bearer as having normative authority over her.

(c) One grants the assumptions of the interest theory whereby what is owed is not the duty as such, but, rather, the consideration specified as the content of the duty. This means one foregoes, what Sreenivasan regards as the signal advantage of the will theory, namely, a readily comprehensible sense of obligation of one party to the other as represented by the figure of a bond (*vinculum juris*).

Alternatively, a construal of the prepositional phrase “duty to” that is free of those constraints is one which allows its user to mean pretty much anything s/he chooses within the ambit of conveying that something about the duty in question *matters* in some way to the person designated as its counterparty. Exactly what

matters about it and why will be questions for specific substantive investigation: answers will not be discovered by simply analysing the general concept.

For anyone who wants to find more determinate meaning for the locution "duty to" than the last option offers, but which is not the empty indication of a logical correlation, nor dependent on a particular theory that is known to be contested, this conclusion will appear as an impasse. In §7 we briefly explored the possibility of opening up a way around the impasse by seeking a synthetic perspective on the competing accounts. That preliminary reconnaissance suggested that the quest for a synthetic understanding of *directionality* throws up fundamental questions about the place of rights and duties in our conceptual topography of morality. The tensions between cooperation and conflict, between connectedness and separateness of persons, are integral to the realities that talk of rights and duties is part of.

At the same time connected and separate: that is what the preposition indicates about relations between persons. How are they so related? That, in effect, is the question underlying the inquiry into what it means to speak of a duty to another person. It would appear to be a divergent question.